

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.442/M/2022
Assessment Year: 1997-98**

Dy. Commissioner of Income Tax, Central Circle – 2(1), Old CGO Building, 804, 8 th Floor, CIT 2(1)(2), M.K. Road, Mumbai - 400020	Vs.	Shri Kumar Rasiklal Mehta, 602-603, Prasad Chambers, Opera House, Mumbai – 400 004 PAN: AAOPM3805D
(Appellant)		(Respondent)

**CO No.89/M/2022
(Arising out of ITA No.442/M/2022)
Assessment Year: 1997-98**

Shri Kumar Rasiklal Mehta, 602-603, Prasad Chambers, Opera House, Mumbai – 400 004 PAN: AAOPM3805D	Vs.	Dy. Commissioner of Income Tax, Central Circle – 2(1), Old CGO Building, 804, 8 th Floor, CIT 2(1)(2), M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Harsh Kapadia, A.R.
Revenue by : Shri Pramod Nikalje, D.R.

Date of Hearing : 07 . 11 . 2022
Date of Pronouncement : 29 . 11 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeal and cross objections emanated from same impugned order passed by Ld. Commissioner

of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] are being taken up for disposal by way of composite order.

2. Appellant Dy. Commissioner of Income Tax, Mumbai (hereinafter referred to as the Revenue) and the cross objector Shri Kumar Rasiklal Mehta (hereinafter referred to as the assessee) by filing present appeal and cross objections sought to set aside the impugned order dated 17.12.2021 passed by the Ld. CIT(A) on the grounds inter-alia that:

ITA No.442/M/2022 (Revenue's appeal)

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-48, Mumbai had erred in deleting the addition of Rs.27,50,000/- on account of initial deposit in the foreign bank account ignoring the fact that the information about the foreign bank account was received by the Government of India and the bank account was not disclosed by the assessee.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Mumbai had erred in allowing assessee's claim hereby causing the bank balance to be taxed in subsequent assessment years and not in the present assessment years.”

CO No.89/M/2022 (Cross Objection)

“1. On the facts and in the circumstances of the case and in law the learned Commissioner (Appeals) ('CIT(A)') erred in upholding the reassessment proceedings initiated under section 147 of the Income-tax Act, 1961 ('Act') by the learned Assessing Officer.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) and learned AO also failed to appreciate that the lime limit to issue the reopening notice under section 149 of the Act had expired and hence, the reassessment order was beyond the limitation period.”

3. Briefly stated facts necessary for adjudication of the issue at hand are: assessee being a partner and director in M/s. Shairu Gems Pvt. Ltd. engaged in processing and exporting of diamonds, filed original return of income on 31.03.2008 declaring total income at Rs.46,94,289/- and the assessment was framed under section 143(3)

of the Income Tax Act, 1961 (for short 'the Act') on 16.10.2009 determining the total income at Rs.47,60,410/-. Thereafter, assessment was reopened by initiating the proceedings under section 147/148 of the Act and in response thereto the assessee filed revised return at the total income of Rs.1,00,60,410/-.

4. On the basis of information received from French Government under Double Taxation Avoidance Agreement (DTAA) in exercise of its sovereign powers in the form of "base note" containing all the personal details of the assessee including his name, date of birth, sex, residential address, position, nationality along with date of opening of the bank account in HSBC Bank, Geneva and amount of balance in the particular years as mentioned in the document. At the time of investigation by the Investigation wing of Income Tax Department, Mumbai and during recording of statement under section 131 of the Act the assessee denied having any such account maintained with HSBC Bank, however he has agreed that the amount reflected in the "base note" was received from French Government of US\$1,17,372/- equivalent to Rs.53,00,000/- as additional income for A.Y. 2007-08 and paid tax thereon to the tune of Rs.39,94,250/-.

5. Declining the objections raised by the assessee against reopening, Assessing Officer (AO) proceeded to make addition of Rs.27,90,000/- equivalent to CHF 1,00,000 (1 CHF is equivalent to 27.50 INR) being the initial investment required to open/maintain an amount in HSBC Geneva by treating the same as undisclosed income under section 69A of the Act and thereby framed the assessment under section 143(3) read with section 147 of the Act.

6. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved Revenue as well as assessee have come up before the Tribunal by way of filing present appeal and cross objection respectively.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

8. Undisputedly the Ld. CIT(A) passed a common order dated 17.12.2021 for A.Y. 1997-98, A.Y. 2006-07 & 2007-08. It is also not in dispute that appeals pertaining to A.Y. 2006-07 and 2007-08 were decided by the Ld. CIT(A) in favour of the assessee. It is also not in dispute that addition made for A.Y. 2006-07 the Revenue challenged the order passed by the Ld. CIT(A) before the Tribunal which has been dismissed by the Tribunal vide order dated 07.09.2022 in ITA No.439/M/2022 and CO No.87/M/2022 arising out of ITA No.439/M/2022 for A.Y. 2006-07.

9. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee contended that now the issue raised in the present appeal as to making addition of Rs.27,50,000/- by the AO and confirmed by the Ld. CIT(A) stands covered as the peak amount of US\$117372 has already been taxed in the hands of the assessee and drew our attention towards annexure with which is a “base note” issued by French Government wherein the peak amount in the bank account of the assessee was US\$117372.

10. We have perused the order passed by the Ld. CIT(A) who has decided the identical issue by returning following findings:

“17. Ground number 5 and 6 of the appellant deal with the addition made of Rs.27,90,000/- u/s. 69A of the Act. While dealing with this issue, the AO vide para 7 of the assessment order has stated as under:

"Since, the assessee has not submitted the copy of said bank statement & failed to discharge his onus and no evidence was produced to prove, his claim, in view of the above the assessee was show caused during the assessment proceedings vide notice u/s 142(1) dated 09.02.2015 as to why an amount of US\$ 1,00,000 should not be treated as undisclosed Income of the assessee being the minimum amount required to open/operate an account in HSBC, Geneva"

17.1 In response to this notice, the assessee made a submission dated 25.02.2015 wherein the assessee has stated that highest maximum total balance of US\$ 1,17,372 is inclusive of the initial deposit that might have being deposited being minimum amount required to open/maintain said account hence, having included in the peak balance voluntarily offered for taxation no further separate taxability of same is acquired. The AO being not satisfied with the contention of the assessee as also the assessee failed to submit the complete bank statement in respect of the account with HSBC, Geneva, added back amount of Rs. 27,50,000/- being undisclosed income u/s. 69A of the Act, to the total income of the assessee.

17.2 In my considered view, the AO has simply applied the logic that the account in HSBC Geneva can be opened only on depositing minimum specific amount which he considered as income of the assessee u/s. 69A of the Act. After considering overall facts of the case, I feel that the AO's action in making addition of Rs. 27,50,000/- being initial deposit amount for opening the bank account with HSBC, Geneva is not correct. On this issue common logic has to be applied that, while considering an amount of Rs. 27,50,000/- being initial deposit amount on later in F.Y. 2006-07, it gets merged in the balances carried forward and cannot be considered in isolation without considering subsequent cumulative effect. Thus, estimating initial deposit amount of US\$ 1,00,000 (Rs. 27,50,000/- to the income of the assessee is over and above maximum balance of US \$ 1,17,372 (Rs.53,00,000/-) which is already considered for A.Y. 2007-08. It will be not fair to held the assessee for the same addition made in A.Y. 2007-08 resulting in double taxation. Moreover, for any additional addition over and above what is reflected in the piece of information received, it is the duty of the AO to bring on record additional information or document so as to attempt any further addition. Nothing has been brought on record.

17.3 Considering these facts, the AO is directed to delete the addition of Rs. 27,50,000/-. Thus, ground number 5 and 6 are Allowed.”

11. In A.Y. 2006-07 identical deletion made by the Ld. CIT(A) has been confirmed by the Tribunal by returning following findings:

“8. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue as envisaged by the Ld. DR that CIT(A) erred in deleting the addition of account balance in foreign bank account overlooking the various facts and findings of the AO and the provisions applied in respect of foreign bank account. Whereas the Ld. AR submitted that the CIT(A) has considered the relevant factors and the decision in the assessee’s own case for the A.Y 2007-08, where the addition has been made by the A.O. and the appeal was dismissed by the CIT(A), further the assessee has accepted the decision of the CIT(A) and has not preferred appeal. We find that the CIT(A) has passed the common order for A.Y 1997-98, 20006-07 & 2007-08 vide order dated 17.12.2021 and the CIT(A) has dealt on the grounds of appeal, submissions, findings of the AO and has dismissed the appeal for A.Y 2007-08 referred at page 37 of the order. We consider in appropriate to refer to the findings of the CIT(A) at page 47 Para 17 to 17.3 read as under:

17. Ground number 5 and 6 of the appellant deal with the addition made of Rs. 27,90,000/- u/s. 69A of the Act. While dealing with this issue, the AO vide para 7 of the assessment order has stated as under:

"Since, the assessee has not submitted the copy of said bank statement & failed to discharge his onus and no evidence was produced to prove his claim, in view of the above the assessee was show caused during the assessment proceedings vide notice u/s 142[1] dated 09.02.2015 as to why an amount of US\$ 1,00,000 should not be treated as undisclosed Income of the assessee being the minimum amount required to open/operate an account in HSBC, Geneva."

17.1 In response to this notice, the assessee made a submission dated 25.02.2015 wherein the assessee has stated that highest maximum total balance of US\$ 1,17,372 is inclusive of the initial deposit that might have being deposited being minimum amount required to open/maintain said (d) account hence, having included in the peak balance voluntarily offered for taxation no further separate taxability of same is acquired. The AO being not satisfied with the contention of the assessee as also the assessee failed to submit the complete bank statement in respect of the account with HSBC, Geneva, added back amount of Rs. 27,50,000/- being

undisclosed income u/s. 69A of the Act, to the total income of the assessee.

17.2 In my considered view, the AO has simply applied the logic that the account in HSBC Geneva can be opened only on depositing minimum specific amount which he considered as income of the assessee u/s. 69A of the Act. After considering overall facts of the case, I feel that the AO's action in making addition of Rs. 27,50,000/- being initial deposit amount for opening the bank account with HSBC, Geneva is not correct. On this issue common logic has to be applied that, while considering an amount of Rs. 27,50,000/- being initial deposit amount on later in F.Y. 2006-07, it gets merged in the balances carried forward and cannot be considered in isolation without considering subsequent cumulative effect. Thus, estimating initial deposit amount of US\$ 1,00,000 (Rs. 27,50,000/- to the income of the assessee is over and above maximum balance of US \$ 1,17,372 (Rs. 53,00,000/-) which is already considered for A.Y. 2007-08. It will be not fair to held the assessee for the same addition made in A.Y. 2007-08 resulting in double taxation. Moreover, for any additional addition over and above what is reflected in the piece of information received, it is the duty of the AO to bring on record additional information or document so as to attempt any further addition. Nothing has been brought on record.

17.3 Considering these facts, the AO is directed to delete the addition of Rs. 27,50,000/-. Thus, ground number 5 and 6 are Allowed.

9. We find that the CIT(A) has considered the facts, provisions and dealt on the financial aspects and observed that the income is already assessed in the A.Y 2007-08 and therefore granted the relief. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidence or information to take a different view. Accordingly, we do not find any infirmity in the order of the CIT(A) on the issues raised before the Honble Tribunal in the revenue appeal and uphold the same and dismiss the grounds of appeal filed by the revenue.”

12. Bare perusal of the findings returned by the Ld. CIT(A) deleting the addition made by the AO goes to prove that when maximum balance of (peak balance) US\$117372 (Rs.53,00,000/-) has already been considered in A.Y. 2007-08 as per the “base note” received from French Government any other addition over and above the same would be without any evidence on record. In other words when amount of US\$117372 has already been treated as

undisclosed income being the peak amount as per annexure C has already been taxed in the hands of the assessee any other addition as has been made by the AO on the basis of surmises that the account in HSBC can be opened only on depositing minimum specific amount of USD 1,00,000/- and made the addition thereof, whereas the said amount stands merged in the balances carried forward and cannot be considered independently without considering the subsequent cumulative effect. So we find no illegality or perversity in the impugned findings returned by the Ld. CIT(A).

13. Resultantly, appeal filed by the Revenue is hereby dismissed and cross objections filed by the assessee challenging the validity of re-assessment is also dismissed as the issue has become academic and left open.

Order pronounced in the open court on 29.11.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.11.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.